



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 15, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Tx 78756-3199

OR98-1455

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116232.

The Texas Department of Health (the "department") received a request for information concerning the investigation of a complaint against Hospice of the Big Country. You contend that the submitted documents are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 142.009(d) of the Health and Safety Code.¹ We have considered the exception you claim and have reviewed the documents at issue.

You note that you did not submit your request for a decision to this office within ten business days of receiving the request for information. Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

¹Because your submission to the office does not appear to include all of the documents responsive to the request, we assume that you have already provided the requestor with other responsive documents.

In accordance with sections 552.301 and 552.302, the information at issue is presumed public. However, section 552.101 protects information that is confidential by law. Because the presumption of openness is overcome by a showing that information is confidential by law, we must consider your section 552.101 claim.

Section 552.101 encompasses confidentiality statutes such as section 142.009(d) of the Health and Safety Code. Chapter 142 of the Health and Safety Code regulates the licensing of home and community support services agencies. Section 142.009(d) provides as follows:

(d) the reports, records, and working papers used or developed in an investigation² made under this section are confidential and may not be released or made public except:

- (1) to a state or federal agency;
- (2) to federal, state, or local law enforcement personnel;
- (3) with the consent of each person identified in the information released;
- (4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule; or
- (5) on a form developed by the department that identifies deficiencies found without identifying a person, other than the home and community support services agency.

Health & Safety Code § 142.009 (footnote added). You indicate that the submitted documents “were developed as part of a complaint investigation.” Accordingly, we find that the documents are confidential pursuant to section 142.009(d) and must be withheld from disclosure under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

²An “investigation” is defined as “an inspection or survey conducted by a representative of the department to determine if a licensee is in compliance with this chapter.” Health & Safety Code § 142.001(18).

Yours very truly,

A handwritten signature in cursive script that reads "Karen Hattaway". The signature is written in black ink and is positioned above the printed name and title.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 116232

Enclosures: Submitted documents

cc: Ms. Loretta Fulton
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(w/o enclosures)